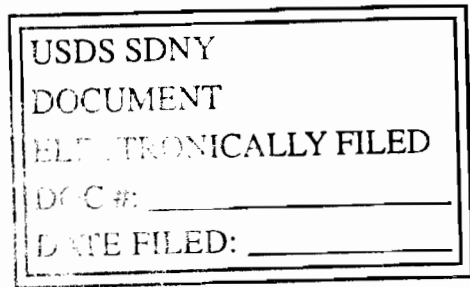


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



MIGUEL FIGUEROA,

Plaintiff,

-v-

MICHAEL J. ASTRUE, Commissioner of Social
Security,¹

Defendant.

No. 04-CV-7805 (KMK) (LMS)

ORDER ADOPTING REPORT
AND RECOMMENDATION

KENNETH M. KARAS, District Judge:

Miguel Figueroa ("Plaintiff") brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the Commissioner of Social Security's decision to deny him disability insurance benefits and supplemental security income ("SSI") payments. Plaintiff's applications for disability insurance benefits and supplemental security income were denied on April 16, 2003. After a hearing requested by Plaintiff, an administrative law judge ("ALJ") denied Plaintiff's claims, finding that Plaintiff was not disabled within the meaning of the Social Security Act. The Commissioner's denial of Plaintiff's claims became final on August 4, 2004, when the Appeals Council denied Plaintiff's request for a review of the ALJ's decision. Plaintiff brought this action on October 1, 2004, challenging that final decision. The Commissioner filed a motion for judgment on the pleadings, arguing that the ALJ's decision was supported by substantial evidence. (Dkt. Nos. 15, 16, 18.) Plaintiff cross-moved for judgment on the

¹ Michael J. Astrue, the current Commissioner of Social Security, took office as of February 12, 2007. Pursuant to Fed. R. Civ. P. 25(d)(1), he is automatically substituted as Defendant. Plaintiff named "Commissioner of Social Security," without specifying a particular individual, as Defendant in his case.

pleadings, stating that the ALJ applied the wrong legal standards and that the ALJ's decision was not supported by substantial evidence. (Dkt. No. 19.) Judge Colleen McMahon, who was originally assigned to this case,² referred the case to Magistrate Judge Lisa M. Smith. (Dkt. No. 3.) On August 4, 2009, Magistrate Judge Smith filed a Report and Recommendation ("R&R") recommending that this Court grant the Commissioner's motion for judgment on the pleadings and deny Plaintiff's cross-motion for judgment on the pleadings. (R&R 1, 24.)

A district court reviewing a magistrate judge's report and recommendation addressing a dispositive motion "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also, e.g., Donahue v. Global Home Loans & Fin., Inc.*, No. 05-CV-8362, 2007 WL 831816, at *1 (S.D.N.Y. Mar. 15, 2007). Under 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, parties may submit objections to the magistrate judge's report and recommendation. The objections must be "specific" and "written," Fed. R. Civ. P. 72(b)(2), and must be made "[w]ithin 10 days after being served with a copy of the recommended disposition," *id.*; *see also* 28 U.S.C. § 636(b)(1), plus an additional three days when service is made pursuant to Fed. R. Civ. P. 5(b)(2)(C)-(F), *see* Fed. R. Civ. P. 6(d), as was the case here (R&R 25).

Where a party submits timely objections to a report and recommendation, the district court reviews de novo the parts of the report and recommendation to which the party objected. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); *Donahue*, 2007 WL 831816, at *1. "However, where a party does not submit an objection, a district court need only satisfy itself that

² The case was reassigned to the undersigned on August 6, 2007.

there is no clear error on the face of the record.” *Donahue*, 2007 WL 831816, at *1 (internal quotation marks omitted); *see also Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (The district court “may adopt those portions of the . . . report [and recommendation] to which no ‘specific written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” (quoting Fed. R. Civ. P. 72(b)(2)). “In addition, a party’s failure to submit an objection will waive that party’s right to challenge the report and recommendation on appeal.” *Donahue*, 2007 WL 831816, at *1.

Here, neither Party has filed objections to Magistrate Judge Smith’s R&R. Thus, the Court has reviewed the R&R for clear error. Finding none, the Court adopts the R&R in its entirety.

Accordingly, it is hereby

ORDERED that the Report and Recommendation, dated August 4, 2009, is ADOPTED in its entirety. It is further


ORDERED that the Commissioner's motion for judgment on the pleadings dismissing Plaintiff's claims for disability benefits and supplemental security income is GRANTED. It is further

ORDERED that Plaintiff's cross-motion for judgment on the pleadings is DENIED. It is further

ORDERED that the Clerk of the Court is respectfully directed to enter judgment for Defendant, to terminate the pending motions (Dkt. Nos. 15, 19), and to close this case.

SO ORDERED.

Dated: December 3, 2009
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

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United States Magistrate Judge